

## FIRST DIVISION

**[ G.R. Nos. 100382-100385, March 19, 1997 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARIO TABACO, ACCUSED-APPELLANT.**

### DECISION

**HERMOSISIMA, JR., J.:**

In four related informations, Mario Tabaco was charged with four counts of Murder for shooting to death on March 22, 1987 Capt. Oscar Tabulog (Criminal Case No. 10-259), Ex-Mayor Jorge Arreola (Criminal Case No. 10-270), Felicito Rigunan (Criminal Case No. 10-284) and Pat. Romeo Regunton (Criminal Case No. 10-317). Except for the names of the victims, the informations in these four (4) cases identically read:

"That on or about March 22, 1987, in the Municipality of Aparri, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Mario Tabaco, armed with a gun, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one [name], inflicting upon him several wounds which caused his death.

Contrary to Law."<sup>[1]</sup>

In Criminal Case No. 10-316, accused was charged in the following information with the complex crime of Homicide and Frustrated Homicide for shooting to death Jorge Siriban, Jr. and the wounding of Sgt. Benito Raquepo:

"That on or about March 22, 1987, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Mario Tabaco, armed with a gun, with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Jorge Siriban, Jr., and S/Sgt. Benito Raquepo, inflicting upon them wounds on their bodies, which wounds sustained by Jorge Siriban, Jr., caused his death.

That the accused had performed all the acts of execution (with respect to the victim Sgt. Benito Raquepo; which would have produced the crime of Homicide as a consequence but which nevertheless, did not produce it by reason of causes independent of his own will."<sup>[2]</sup>

All cases were consolidated before Branch 10 of the Regional Trial Court of Aparri, Cagayan.

The mass of evidence for the prosecution, as found by the trial court, is as follows:

"In the evening of March 22, 1987, the 17th PC stationed at Aparri, Cagayan, under then Lt. James Andres Melad, sponsored a cock derby, under the name of Jose Ting, at the Octagon Cockpit Arena located at Aparri, Cagayan.

This being so, peace officers in uniform with long firearms were assigned as guards to maintain peace and order at the cockpit arena namely: (1) Sgt. Benito Raquepo; (2) CIS Roque P. Datugan, both from the 117th PC and (3) Pat. Andles Semana, INP, Aparri, Cagayan. Accused Mario Tabaco who was in civilian clothes claims to have been also assigned by his Commanding Officer of 117th PC, to verify the presence of NPAs and assist in the protection of VIPs in the cockpit arena, bringing with him his M-14 issued firearm.

Other peace officers who came to participate were: (1) Policeman Mariano Retreta of INP, Buguey, Cagayan, who arrived with the deceased Jorge Siriban and Licerio Antiporda, Jr., Licerio Antiporda II; (2) Sgt. Rogelio Ferrer of 117th PC Company; (3) Policeman Romeo Regunton (deceased) who was also armed, arrived in company with the deceased Ex-Mayor Arreola; (4) Fireman Rogelio Guimmayen, INP Buguey; (5) Pat. Barba; and (6) CIC PC Paragas.

At about nine (9) o'clock in the evening of same date, the group of the late Mayor Jorge Arreola of Buguey, Cagayan, arrived at the cockpit arena. His companions were (1) Antonio Villasin; (2) Rosario Peneyra; (3) victim Lorclo Pita, Jr. and/or five (5) of them including the Mayor. They occupied and were (4th row) north western part cockpit-gate. Others seated with the Mayor were: (1) the late Capt. Oscar Tabulog; (2) the late Pat. Romeo Regunton, who was at the back of the mayor; (3) the late Felicito Rigunan. The accused CIC Tabaco was seated on the arm of the bench situated at the lower portion of the arena about more than three (3) meters away, (infront and a little bit in the west), from the place where the late Mayor and his group were seated (at the 4th row of seats upper portion). During the ocular inspection conducted, the Court noticed the distance to be more than three (3) meters, and/or probably 4-5 meters.

At about ten(10) o'clock 1987, while the accused Mario Tabaco was seated as described above, he suddenly without warning or provocation, shot the late mayor Jorge Arreola, with his M-14 rifle, followed by several successive burst of gunfire, resulting in the shooting to death of the late Mayor Arreola, Capt. Oscar Tabulog, Felicito Rigunan and Pat. Romeo Regunton, although the latter managed to run passing through the western gate near the gaffers cage but was chased by accused Tabaco. Regunton was later found dead inside the canteen of Mrs. Amparo Go inside the Octagon cockpit arena.

Pat. Mariano Retreta of INP Buguey, who was then at the Co's canteen, saw the accused going out rushing from the cockpit arena, at a distance of one meter. Pat. Retreta is a relative and neighbor of the accused Tabaco in Buguey, Cagayan. He tried to pacify Tabaco telling him 'what is that happened again Mario.' Meanwhile, Sgt. Benito Raquepo of 117th

PC, and one of those assigned to maintain peace and order at the Octagon cockpit arena, who was at the canteen taking snacks, heard five (5) successive gun reports coming from inside the cockpit arena. In a little while, he saw the accused Tabaco coming from inside the cockpit arena. Raquepo advised Tabaco — 'Mario relax ka lang' — 'Mario keep calm.' They stood face to face holding their rifles and when Tabaco pointed his gun towards Sgt. Raquepo, Pat. Retreta grappled for the possession of the gun to disarm Tabaco, and in the process, the gun went off hitting Sgt. Raquepo and also the late Jorge Siriban who happened to be near Raquepo. Siriban died on the spot while Raquepo survived his wounds on his legs due to adequate medical treatment.

There were other persons injured that evening namely: (1) Antonio Chan — injured on his right foot; (2) Salvador Berbano — injured on his right forearm and on his right abdomen and (3) Rosario Peneyra on his face and right shoulder. But, the three, did not file their complaints."<sup>[3]</sup>

Upon the other hand, the evidence for the defense as stated in the Brief for the Accused-appellant is as follows:

"Ordered by his commanding officer in the 117th PC Company to assist in the maintenance of peace and order at the Octagon Cockpit Arena located at Talungan, Aparri, Cagayan on March 22, 1987, accused Mario Tabaco with his officially issued M-14 rifle and with the basic load of ammunition went to the Octagon Cockpit arena on March 22, 1987 in compliance to the orders of a superior officer arriving thereat at about 12:00 o'clock noon, more or less. He directly went inside the cockpit arena to make some observations and found out that there were several persons inside the said cockpit who were in possession of firearms, some short and some long, and were seen in different places and/or corners of the cockpit. Accused did not bother to verify as to why the said persons were allowed to carry their firearms because of his impressions that if they did not have the authority, the guards of the main gate of the cockpit would surely have confiscated the same from them. It was his belief then that they may have come from other agencies of the government, assigned to help in the maintenance of peace and order in the cockpit, Accused thus seated himself at the lowermost seat (first step) of the slanted bleachers of the Octagon Cockpit arena on March 22, 1987.

At about 9:00 o'clock that very night of March 22, 1987, while accused was seated at the lowermost seat of the slanted bleachers of the Octagon Cockpit arena, he heard a gun report fired atop his head. Having been officially assigned to help in the maintenance of peace and order in the cockpit and that his presence must be known, his immediate reaction upon hearing the gun report was to fire a warning shot in the air and directed to the ceiling and/or roof of the Octagon cockpit arena. After firing a warning shot, his warning was answered by burst of gun fire coming from different directions inside the cockpit arena, for which reason, he forced to leave and rush outside, holding his M-14 rifle with the muzzle pointed downwards. As he (accused) rushed towards the main gate of the cockpit arena, Mariano Retreta and Sgt. Benito Raquepo

saw him and who told him, (accused) to relax lang. Accused testified that when Mariano Retreta and Sgt. Benito Raquepo told him to relax lang, he all the time thought that the gun reports fired inside the cockpit arena was nothing to said persons. Accused however, insisted to go out, but in so doing, Mariano Retreta pressed the gun which he was holding downwards and grabbed said gun from accused. As the gun was pressed by Mariano Retreta, said gun went off, hitting Sgt. Benito Raquepo and the death of Jorge Siriban, Jr. That because of such incident, accused had to run away, out of fear to Sgt. Benito Raquepo and the family of Jorge Siriban who may lay the blame on him. The following morning, accused surrendered to the police authorities of Lallo, Cagayan, who happened to pass by, not on account of the death of Ex-Mayor Jorge Arreola, Capt. Oscar Tabulog, Felicito Rigunan and Oscar Regunton which he did not know at the time he surrendered, but on account of the death of Jorge Siriban, Jr. and the injury sustained by Sgt. Benito Raquepo."<sup>[4]</sup>

After trial, the court a quo, in a joint decision dated January 14, 1991, found accused-appellant guilty as charged on all counts. In giving credence to the version of the prosecution over that of accused-appellant, it found that:

"From the evidence adduced, it is easily discernible that the prosecution and defense cannot agree on what actually transpired that night of March 22, 1987, at the Octagon Cockpit Arena, Aparri, Cagayan leading to the shooting to death of subject victims. For, while the prosecution maintains that it was the accused Mario Tabaco who shot the victims, the defense insists that he is not the assailant, but somebody else or others, since the accused merely fired a warning shot upwards the roof of the cockpit arena.

In fine, the Court is called upon to resolve the issue of credibility versions. 'Where there are directly conflicting versions of the same incident, the Court, in its search for the truth, perforce has to look for some facts and circumstances which can be used as valuable tools in evaluating the probability or improbability of a testimony for after all, the element of probability is always involved in weighing testimonial evidence. (Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., et al., L-46908, May 17, 1980, 97 SCRA 734; Lacsan vs. Court of Appeals, et al., L-46485, November 21, 1979, 94 SCRA 461, both citing the case of People vs. Boholst Caballero, L-2349, November 25, 1974, 61 SCRA 180).

Towards this end, the prosecution presented three (3) eyewitnesses, namely: Antonio Villasin, Rosario Peneyra and Fireman Rogelio Guimmayen in the shooting to death of the deceased victims, Ex-Mayor Jorge Arreola, Capt. Oscar Tabulog, Romeo Regunton and Felicito Rigunan. Also, the prosecution presented Sgt. Benito Raquepo, Pat. Mariano Retreta and PC Sgt. Rogelio Ferrer, and three (3) eyewitnesses in the shooting to death of Jorge Siriban and the wounding of Sgt. Raquepo. So too, the prosecution presented PC Sgt. Antonio Domingo, Pat. Andres Semana, PC Sgt. Jose Algeria and Pat. Merlin Bautista, as corroborative witnesses in both situational cases/incidents. As well stated in the above

findings of facts, prosecution witnesses Antonio Villasin and Rosario Peneyra actually saw the accused Mario Tabaco stood up from his seat at the lower front row and in port arm position directed his M-14 rifle towards the place of the late Mayor Arreola, and his group at the 4th row upper portion of the bleachers and fired three successive automatic gun shots that felled Mayor Jorge Arreola, Capt. Oscar Tabulog, Pat. Romeo Regunton and one Felicito Rigunan. This was corroborated by prosecution witness Fireman Rogelio Guimmayen who was then ten (10) meters away from the accused, which was not far, considering that the cockpit arena was well-lighted at that time.

Not only that, immediately after the gun burst of automatic fire, the accused was seen coming out rushing from inside the cockpit arena by INP Pat. Mariano Retreta and PC Sgt. Raquepo, the former being a relative and neighbor, pacified accused Tabaco, telling — 'what is that happened again Mario,' while the latter told him — 'Mario relax ka lang keep calm.' After which Mariano Retreta grappled for the possession of the gun assisted by PC Sgt. Rogelio Ferrer when Tabaco refused to stop. Sgt. Ferrer got the gun M-14 and surrendered it to his Commanding Officer, as corroborated by Sgt. Antonio Domingo, while in the process of disarming the accused Mario Tabaco, when the gun went off, hitting the deceased victim Jorge Siriban and Sgt. Raquepo."<sup>[5]</sup>

The accused admitted that the M-14 rifle which he brought with him to the cockpit arena was heavily loaded, but when the gun was taken from his possession by Pat. Retreta and PC Sgt. Ferrer, the gun's magazine was already empty.

The court a quo said further:

ATTY. VILLENA:

Q: When you took that M-14 from the accused, do you remember if it had a magazine that time?

A: Yes, sir with magazine.

Q: Do you have the magazine now?

A: It is with 117th PC Company, sir.

Q: After taking that M-14 from the accused, did you examine the rifle?

A: Yes, sir, I examined it.

Q: Did you examine the magazine of that rifle?

A: Yes, sir.

Q: Did you examine if there are live bullets?

A: No live bullets, sir. "(TSN, direct examination, Sgt. Ferrer, pp. 44-45, March 26, 1990 session, stenographer L. Tamayo).

Further, Sgt. Ferrer continued: